

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1402

To be argued by
MARTIN E. GOTKIN

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

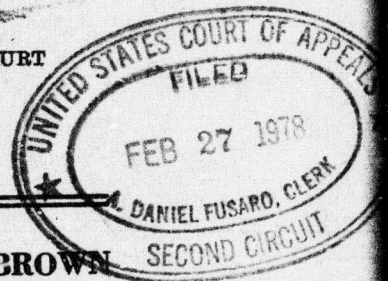
Appellee,

—against—

RAYMOND BROWN,

Appellant.

2/27
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



BRIEF AND APPENDIX FOR APPELLANT BROWN

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA, :

-against- :

RAYMOND BROWN, et al. :

-----x

Appellant Raymond Brown's Brief

Preliminary Statement

This is an appeal from a judgment of conviction entered in the United States Court for the Southern District of New York on August 31, 1977 by the Hon. Charles Haight, Jr., following appellant's conviction after a jury trial of both counts of an indictment charging: (First Count) a conspiracy from August, 1976 to May, 1977 to distribute and possess with intent to distribute Schedule I and II narcotic drugs and (Second Count) a substantive count charging distribution and possession with intent to distribute only a Schedule I drug to wit, heroin on August 1, 1976.

Appellant was sentenced on August 31, 1977 to eight years on the conspiracy count and one year on the substantive count; these sentences to run consecutively. In

addition, Appellant was sentenced on each count to a six year special parole term to run concurrently. (A-6) Appellant is presently serving his sentence.

STATEMENT OF FACTS

The Case Against Appellant Brown

The chief witness for the Government was one Yolanda Valdez Simpson, a co-defendant who had previously pleaded guilty.

In substance she testified concerning the charges in the indictment as follows: (T-90-148)* (KA 23-KA 81)

In August, 1976, the witness met appellants Knuckles and Smith in an apartment at Amsterdam Avenue at which time narcotics were packaged. Subsequently the witness agreed to work for Knuckles and to use her own apartment on Riverside Drive for the drug operation. (T-96).

In October, 1976, several thousand glassine envelopes were filled with a white powder and bonita (KA 44-KA 48) No evidence was introduced to establish if the white powder was heroin .

The witness Simpson testified on cross-examination that while the drugs were being packaged, the defendants sniffed cocaine as they worked. (T 199) (KA 83)

*Page references preceded by "T" refer to trial transcript and those preceded by "A" refer to pages in the Appendix. ("KA" refers to appendix of Co-Appellant Knuckles.)

There was introduced into evidence a spoon and strainer together with a lab report which indicated that only cocaine was present. (T 255, 259).

The Government called DEA Agent Brophy, who testified that he searched the apartment of Simpson and found the strainer, spoon and glassine envelopes (T 373-378). Through this witness it was established that only traces of cocaine and no traces of heroin were found on any of the material taken from Simpson's apartment (T 417, 418, 438-444). (KA 101-KA 109)

It was also indicated that defendant Smith made a statement to Agent Brophy.

Nowhere in any of the trial transcript is there any evidence that the cocaine that was used was for anything but personal use of the defendants while they were packaging the alleged drugs and was not in any way possessed with intent to sell or distribute or indeed sold in any way, nor was the amount of cocaine ever established.

It is evident that the credibility of the testimony of the witness Simpson, which was direct and rather simple was for the jury to assess.

The Government then called Warren Sims who, over strenuous objections by tri counsel testified that in 1974 and 1975, he had been in the narcotics business with appellants, Knuckles and Brown. This testimony was allowed in on the grounds of "similar acts" as was testimony of Betty McFarland, a narcotics dealer, who testified to additional similar acts with the defendant Knuckles in 1974 (T 504). Of course, the similar acts were prior to the date of the conspiracy in the instant indictment (T 529).

In addition the Government introduced two tape recorded conversations between Sims who was at that time cooperating with the authorities and with Yolanda Simpson, who at that time had not been arrested. The transcripts of these conversations were received as Government's Exhibits 12a & 13a* (T 549, 551, 558) over defense objections. The reading of these transcripts reveals that the name of appellant Brown is mentioned numerous times in connection with the alleged narcotics conspiracy and his alleged participation therein.

After the Government rested, motions under Rule 29 were made on the grounds that there was a variance

*Exhibit 12a is at KA 336-KA 342; and Exhibit 13a is at KA 343-KA 356.

between the indictment which alleged heroin and cocaine in Count One (Conspiracy) and only heroin in Count Two (Substantive) and the proof which was only cocaine. These motions were denied (T.854).

The appellant Brown in his defense called Henry Gray (T.861) who testified that he knew appellant for about 10 years and that he, Gray, was the owner of gypsy cabs and that appellant Brown and another drove his cabs from May to December, 1976 and that appellant Brown drove from 6:00 a.m. until 6:00 p.m. during those months. In addition, he testified that Brown averaged 55-65 miles every night while driving the cab.

On cross-examination, the witness stated that although he kept no written record of the specific days Mr. Brown drove the cab, he never missed a week. After this appellant Brown rested.

ARGUMENT

POINT I

THE COURT BELOW ERRED IN NOT FIRST
DISMISSING, PURSUANT TO RULE 29, THE
CONSPIRACY CHARGE IN THE FIRST COUNT
AS IT RELATED TO COCAINE AND THEN GIVING
THE CASE TO THE JURY ONLY AS IT RELATED
TO HEROIN

The indictment contained two counts: the first count alleged a conspiracy to possess with intent to distribute heroin and cocaine and the second count alleged possession of heroin only.

The first count of the indictment (A-3) reads in part as follows:

"2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1) (A) of Title 21, United States Code."

It was clear from the outset despite the fact that the first count alleged both heroin and cocaine that the Government's case involved only a conspiracy to possess with intent to distribute heroin . (T 21-24). Thus, the

prosecutor in his opening statement declared:

"This case will tell you the story of how these three defendants and others working with them turned heroin into thousands of packages for distribution to people on the street." (T. 21)(KA 18)

He further stated:

"That is, they conspired to possess with intent to distribute...approximately 2,000 glassine envelopes of heroin . That is what the Government's proof will show beyond a reasonable doubt." (T 22)(KA 19)

Likewise in the summation by the Government, the Assistant United States Attorney stated that the case is one which involved a "heroin factory operation".

(T 973, 983) (KA 144,KA 146)

Indeed at no time did the Government attorney ever maintain or argue that anything but heroin was involved in this case. This position was steadfastly maintained by the prosecutor even after he had knowledge that the Court was going to instruct the jury that they could convict on each count even if they found the narcotics at Simpson's apartment to be only cocaine. Furthermore, it appears that the Assistant U.S. Attorney who tried this case was the same Assistant who presented the case initially to the

Grand Jury. Certainly from all the facts in the record, it can be inferred that although the Grand Jury may have had some evidence of cocaine presented to them as well as heroin, this Grand Jury intended to indict only as to the heroin.

The only evidence adduced at the trial that the substance being packaged was heroin was not scientific evidence such as laboratory reports or the real evidence itself being presented to the Court but rather only the testimony of Ms. Simpson that the white powder was heroin. As to the matter of proof of the cocaine, the testimony was that only unproven amounts of cocaine which were used by Appellant Brown and the others for their personal use was present. In other words, there was completely lacking any evidence of felonious criminal possession or possession with intent to distribute of cocaine.

Thus, chemical analysis of the material found in Simpson's apartment disclosed that only traces of cocaine were found (T.438-44) (KA 103-KA 109). It was Simpson who testified that the people who were putting the drugs (alleged heroin) into the glassine envelopes were sniffing cocaine. However, no evidence was ever adduced as to who bought the cocaine, the amount involved or whether same was possessed with intent to distribute. Clearly, the evidence was wholly insufficient

to support the felony of possession of cocaine with intent to distribute. Over defense objections (T 893-909) (KA 126-KA 142) at the very least the Court should have granted the defense motion to dismiss under Rule 29 as to cocaine under the first count and then let the case go to the jury on this count only as to heroin . By the Court's failure to do this and permitting the case to go to the jury on both the heroin and cocaine issue by reason of the general verdict appellant has no way of determining if the jury convicted the appellant relating to cocaine or heroin . If the jury did convict based on the evidence relating to just the cocaine, then clearly the verdict would have to be set aside as insufficient as a matter of law.

That the jury was having trouble with the instructions of the Court that whether heroin or cocaine was found was of no legal significance is shown by the question that they asked as to the substance found on the items in the Simpson apartment (T 1175 - 1184)(KA 218 - KA 227) and by their requests for a re-reading of the substantive count instruction and the rather lengthy deliberations of three days with a near deadlock before they returned a verdict of guilty on both counts.

It is well settled that in considering a motion for acquittal under Rule 29, the trial judge must apply the same test applicable to appellate review following conviction, that is, whether the evidence viewed in light most favorable to the government is sufficient to justify a jury verdict of guilt beyond a reasonable doubt.

See i.e. U.S. v. Tramunti 500 F.2d 1334 (2d Cir. 1974) Cert. den. 95 S. Ct. 667)

Goff v. U.S. 446 F.2d 623 (C.A. Okl. 1971).

It is respectfully submitted that no extended argument is necessary to show that there was no evidence to sustain a felony verdict of conspiracy relating to possession of cocaine with intent to distribute under the First Count and if such a finding had been made then this Court would be required to reverse.

However, because of the general verdict, there is no way of knowing if the jury convicted as to the heroin or the cocaine and for this reason also, the conviction under the First Count must be reversed.

The case of Plazola v. United States, 291 F.2d 56 (9th Cir. 1961) is in point. In that case, the appellants conviction on two counts of imparting and concealing marijuana was reversed where the evidence as to one count was obtained in an illegal search and the basis of the jury's verdict on the two counts was not disclosed.

Likewise in the case of Beck v. U.S., 298 F.2d 622 (9th Cir. 1962), which involved a prosecution for income tax evasion and assisting in preparation of false returns, the Court of Appeals reversed the defendant's conviction because the uncertainty as to whether the guilty verdict of wilfully evading income tax was based on proof of unrefuted income coming to the defendant as expense money or upon embezzled money.

That Court held at page 63-01 as follows:

"There having been but a general verdict and no special verdicts entered below, we have no way of determining whether the double receipt of travel money was or was not relied on by the jury to convict the appellant... When two theories are submitted to a jury, one of which is incorrect, a general verdict of guilty must be reversed even though the jury was properly instructed upon the alternative theory. Williams v. State of North Carolina, 1942 317 U.S. 287...; Stromberg v. People of State of California, 1931, 283 U.S. 359..."

In the case of Cramer v. U.S., 325 U.S. 1 (1945), the Supreme Court reversed a judgment of giving aid and comfort to the enemy and noted in finding that the two overt acts alleged were insufficient to support the judgment that:

"The verdict in this case was a general one of guilty, without special findings as to the acts upon which it rests. Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient. Stromberg v. California, 283 U.S.

359, 368; Williams v. North Carolina, 317
U.S. 287, 292." (p. 36 fn 45).

POINT II

THE COURT BELOW ERRED IN NOT DISMISSING
PURSUANT TO RULE 29 THE ENTIRE SUBSTANTIVE
CHARGE IN THE SECOND COUNT WHICH CHARGED
ONLY HEROIN AND IN AMENDING THE SECOND
COUNT OF THE INDICTMENT TO ALLEGE COCAINE
RATHER THAN HEROIN

Count 2 of the Indictment read as follows:

"On or about the 1st day of October, 1976 in the Southern District of New York, Marion Knuckles, a/k/a 'Glenn', Jan Doe a/k/a 'Gwen', Raymond Brown, Rose Smith and Yolanda Valdez Simpson, the defendants, unlawfully, willfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 2,000 quarter bags of heroin hydrochloride". (A 4)

It is beyond dispute that what is charged in count 2 is heroin and not cocaine. After the Court denied the defense motion for a mistrial, the Court charged the jury that the presence of heroin or cocaine would be sufficient to convict the defendants on this count and that there was no legal significance to the fact that only cocaine was present (T1144-1145)(KA 187-KA 188)

The issue then is not one of "variance" between the proof and the pleadings but rather an issue clearly of an "amendment" to the indictment. The learned Court below confined its written decision of July 21, 1977 (KA 9) to

just the question of variance and did not perceive the problem as one of amendment of the indictment.

That an amendment to the indictment such as what was done in this case is improper and calls for a reversal of the judgment was held in the case of Stirone v. United States, 361 U.S. 212 (1960).

In that case the Supreme Court reversed a conviction on the grounds that the trial court submitted to the jury a charge which was not contained in the indictment and in effect amended the indictment. That Court by Mr. Justice Black held quoting from Ex Parte Bain 121 U.S. 1 as follows:

"If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Consitution says 'no person shall be held to answer', may be frittered away until its value is almost destroyed." 121 U.S. 1, 10.

The Court went on to hold in Bain:

"that after the indictment was changed it was no longer the indictment of the grand jury who presented it. Any other doctrine would place the rights of the citizen, which

were intended to be protected by the constitution provision, at the mercy or control of the court or prosecuting attorney..." 121 U.S. 1, 13.

The Bain case, which has never been disapproved stands for the rule that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him. See also United States v. Norris, 281 U.S. 619, 622. Cf. Clyatt v. United States, 197 U.S. 207, 219, 220. Yet the court did permit that in this case...Although the trial court did not permit a formal amendment of the indictment, the effect of what it did was the same."

That Court further held that one of the safeguards which the Grand Jury was to provide to a defendant in a criminal case was "to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge."

Likewise in the case at Bar, the learned judge below by instructing the jury that they could convict the second count if they found cocaine was nothing more than an unpermissible amendment of the indictment contrary to the mandate of Stirone. See also Russell v. United States, 369 U.S. 749, 770-71 (1961)

Likewise in U.S. v. Davis 501 F.2d 1344 (9th Cir. 1974) that court held that where the indictment specified that the drug involved was LSD the defendant could not be convicted if anything other than LSD was found.

A recent case (Watson v. Jago, 558 F.2d33 (6th Cir. 1977)) which overturned a murder conviction on a habeas corpus petition reiterated and cited the principles of Stirone and Bain and declared that:

" Under the Fifth Amendment's provision that no personal shall be held to answer for a capital crime unless on the indictment of a grand jury, it has been the rule that after an indictment has been returned, its charges may not be broadened except by the Grand Jury itself." See also U.S. v. Prejean 494, F. 2d, 495, 497 (5th Cir. 1974).

Certainly a fair inference to be drawn from the entire record in this case is that when the case was presented to the Grand Jury, they were apprised of the cocaine sniffing as well as the packaging of the alleged heroin and as a result of count 2, the Grand Jury believed that there was not sufficient evidence to indict as to felonious possession of cocaine but only as to heroin. How can now the Court substitute its judgment for the Grand Jury?

As stated above, there was clearly no evidence to convict for felonious possession of cocaine. The cocaine was being sniffed by the workers for their personal use during the bagging operation. In addition, six months later the only substance that was found after a laboratory analysis of the items in Simpson's apartment only showed traces of

cocaine and not heroin. Certainly the case should never have been sent to the jury on the question of cocaine and the Court should have made this clear before the jury received the case for deliberation.

POINT III

APPELLANT BROWN ADOPTS ALL RELEVANT
POINTS RAISED BY THE CO-APPELLANTS

Specifically, Appellant Brown adopts Point II and Point IV of Appellant Knuckle's argument.

Point II involved the admission over defense counsel's objections of taped conversations of Simpson and Sims. In these conversations, the appellant Brown was mentioned and the same arguments against its admissibility made by appellant Knuckles applies to Appellant Brown.

Likewise Point IV of appellant Knuckle's brief is applicable to appellant Brown in that prior similar acts or "other crimes" were permitted to be received as to appellant Brown. Specifically, when the witness Warren Sims was permitted to testify that appellant Brown had been in the drug business prior to the conspiracy alleged in the indictment, the appellant was deprived of a fair trial.

CONCLUSION

FOR THE ABOVE REASONS, THIS COURT SHOULD
REVERSE THE JUDGMENT OF CONVICTION BELOW.

Respectfully submitted,
MARTIN E. GOTKIN
Attorney for Defendant-Appellant
Raymond Brown
250 West 57th Street
New York, N.Y. 10019
(212) 541-8390

U.S. TITLE/SECTION: 21:846
21:812, 841(a)(1) & 841(b)(1)(B)
OFFENSES CHARGED: Cons. to violate Federal Narcotics Laws
Distr. & possess. of Heroin, I.
ORIGINAL COUNTS: 1
2
8/31
SUPERSEDING COUNTS

U.S. MAG. CASE NO. 77-524
BAIL - RELEASE
AMT. ☐ Fugitive
Set ☐ Pers. Recog.
PSA
Date ☐ 10% Deposit
Surety Bond
Collateral
3rd Pny Cust
Other
Status Changed (See Doc#et)
Bail Not Made
Disposition of Charges: 7-18-77
Convicted ☒ On All Charges
Acquitted ☐ On Lesser Offense(s)
Dismissed: ☐ WOP: ☐ WP
On Government's Motion

II. KEY DATES & INTERVALS
ARREST or U.S. Custody Began: 4/27/77
Summons Served
First Appearance
High Risk Date: 5-5-77
Indictment: Information ☐
Indict. Waived ☐
In Charging District
Superseding ☐ Indict/Info ☐
ARRAIGNMENT: 5-12-77
1st Plea: 5-12-77
Final Plea
Trial Set For: 6-27-77
Trial: Voir Dire ☐
Trial Began: 7-5-77
Trial Ended: 7-18-77
Disposition of Charges: 7-18-77
Convicted ☒ On All Charges
Acquitted ☐ On Lesser Offense(s)
Dismissed: ☐ WOP: ☐ WP
On Government's Motion

MAGISTRATE: 4/27/77
INITIAL/NO: S.S.08AE
OUTCOME: HELD FOR GOV OR OTHER PROCEEDING IN THIS DISTRICT
PRELIMINARY EXAMINATION: Date: 5/9/77
REMOVAL OR HEARING: ☒ NOT WAIVED
INTERVENING INDICTMENT
OFFENSE: 21 USC 812, 841(a)(1) and 841(b)(1)(B) - NARCOTICS

Attorneys: Alan Levine, Louis Grisorio
233 Broadway, N.Y.C. 10007
791-0932
WO Z-7273

Knuckles-01, Doe-02, Smith-04, Simpson-05
4/26/77
4/27/77
5-5-77
5-6-77
5-12-77
5-17-77
6-27-77
6-28-77
Complaint filed, warrant issued
Defendant presented, represented by Louis Grisorio, 233 Broadway, N.Y. Defendant remanded into the custody of U.S. Marshal in lieu of \$25,000 PRB secured with \$5,000 cash/surety.
INDICTMENT FILED, 77 CR 340, & Ordered sealed.....Knapp,J.
Indictment Ordered unsealed.....Knapp,J.
Deft. (atty. Thomas O'Rourke for Louis Grisorio) pleads not guilty. Deft. continued remanded in lieu of bail fixed at \$25,000 PRB secured by \$2,500 cash. Case assigned to Haight,J. for all purposes.....Knapp,J.
PTC Dft. Raymond Brown by Louis Grisorio, Govt. by Alan Levine, AUSA, Trial dtd. set for June 27, 77, @ 10. AM. All Motions by June 27, 77.....Haight J.
Filed Appearance Bond in the amount of \$25,000.00, Secured by \$2,500.Cash Co-Signed by Earhart Miley, Receipt #089462.
Filed Remand.

DATE	DOCUMENT NO.	PROCEEDINGS (continued)	PAGE	V. EXCLUDABLE DELAY			
				Interval Start Date (3)	Start Date End Date (1)	LD Code (2)	Total Days (4)
6-8-77		Filed Temporary Commitment received for Magistrate's Office.					
7-4-77		Filed transcript of record of proceedings, dated 5-17-77					
7-5-77		Trial began					
7-6-77		Trial cont'd					
7-7-77		Trial cont'd					
7-8-77		Trial cor'd					
7-11-77		Trial cont'd					
7-12-77		Trial cont'd, all parties rest.					
7-13-77		Trial cont'd summations, Judge's charge to Jury					
7-15-77		Trial cont'd, Jurors continue deliberations					
7-18-77		Trial continues, Jurors continue deliberations. Jury verdict at 3:p.m. Dft. guilty on cts 1 and 2. Bail revoked and dft. is remanded. Pre-Sentence report ordered, dft. to be sentenced on 8-31-77.....Haight, J.					
7-25-77		Filed dft's Notice of Motion to set aside the verdict of the Jury. Returnable 7-29-77 at 10:00 a.m.					
7-25-77		Filed Opinion #46206, on Court's ruling with respect to possible variance between the charge in the indictment and the proof adduced at trial.....Haight, J. m/n					
8-31-77		Filed Judgment & Commitment (Atty. Louis Grisorio Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on Count 1. ONE (1) YEAR on Count 2. Sentence on Count 2 to run consecutively with sentence imposed on Count 1. Pur. to the provisions of Title 21, Sec. 841, U.S. Code, the dft. is placed on SPECIAL PAROLE for a term of SIX (6) YEARS on each of counts 1 and 2 to run concurrently with each other and to commence upon expiration of confinement.....Haight J. Issued Commitment 8-31-77					
8-31-77		Dft. Advised of his right to appeal. Dft. Remanded....Haight J.					

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

AL:keo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

77 CRIM. 0340

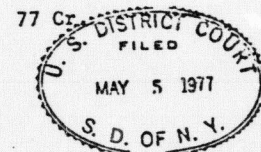
UNITED STATES OF AMERICA,

-v-

MARION KNUCKLES, a/k/a "Glenn",
JANE DOE, a/k/a "Gwen", RAYMOND BROWN,
ROSE SMITH, and YOLANDA VALDEZ SIMPSON,
a/k/a "Yogi",

Defendants.

INDICTMENT



The Grand Jury charges:

1. From on or about the 1st day of August, 1976,
and continuously thereafter up to and including the date
of the filing of this indictment, in the Southern District
of New York, MARION KNUCKLES, a/k/a "Glenn," JANE DOE,
a/k/a "Gwen", RAYMOND BROWN, ROSE SMITH and YOLANDA VALDEZ
SIMPSON, a/k/a "Yogi," the defendants, and others to the Grand
Jury known and unknown, unlawfully, intentionally and
knowingly combined, conspired, confederated and agreed
together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States
Code.

2. It was part of said conspiracy that the
said defendants unlawfully, intentionally and knowingly
would distribute and possess with intent to distribute
Schedule I and II narcotic drug controlled substances
the exact amount thereof being to the Grand Jury unknown
in violation of Sections 812, 841(a)(1) and 841(b)(1)(A)
of Title 21, United States Code.

OVERT ACTS

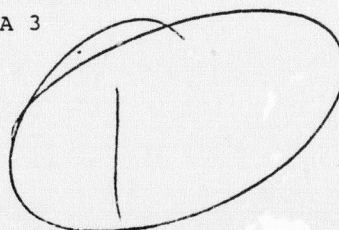
In pursuance of the said conspiracy and to
effect the objects thereof, the following overt acts
were committed in the Southern District of New York:

1. On or about August 16, 1976, MARION
KNUCKLES, a/k/a "Glenn", the defendant, had a telephone
conversation concerning the conditions in the street
for selling heroin.

A 3

MICROFILM

MAY 9 1977



AL:kco

2. In or about October, 1976, MARION KNUCKLES, a/k/a "Glenn", JANE DOE, a/k/a "Gwen", and RAYMOND BROWN, the defendants, delivered a quantity of quinine and bonita to the defendant YOLANDA VALDEZ SIMPSON in the vicinity of 1160 Fifth Avenue, New York, New York.

3. In or about October, 1976, MARION KNUCKLES, a/k/a "Glenn", and JANE DOE, a/k/a "Gwen", the defendants, delivered a quantity of heroin to YOLANDA VALDEZ SIMPSON, the defendant, in the vicinity of 1160 Fifth Avenue, New York, New York.

4. In or about October, 1976, MARION KNUCKLES, a/k/a "Glenn", RAYMOND BROWN, ROSE SMITH, and YOLANDA VALDEZ SIMPSON, the defendants, diluted heroin with quinine and bonita and placed the diluted heroin in approximately 2000 quarter bags of heroin hydrochloride in the vicinity of 626 Riverside Drive, New York, New York.

5. In or about October, 1976, MARION KNUCKLES, a/k/a "Glenn", the defendant, gave YOLANDA VALDEZ SIMPSON, the defendant, approximately \$400.00.

6. On or about October 12, 1976, YOLANDA VALDEZ SIMPSON, the defendant, had a telephone conversation concerning an argument with the defendant MARION KNUCKLES, a/k/a "Glenn" about the payment to her of additional money for preparation of the heroin for distribution described in Overt Act Number 4.

COUNT TWO

The Grand Jury further charges:

On or about the 1st day of October, 1976, in the Southern District of New York, MARION KNUCKLES,

CC:KCO

a/k/a "Glenn", JANE DOE, a/k/a "Gwen", RAYMOND BROWN, ROSE SMITH, and YOLANDA VALDEZ SIMPSON, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 2,000 quarter bags of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

Armine L. Tamm
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

Alan Levine, AUSA

United States of America vs.

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT RAYMOND BROWN

DOCKET NO. 77 CR. 340 (C.S.H.)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AG-215 (7/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 8 DAY 31 YEAR 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

LOUIS GRISORIO, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.

☐ NOLO CONTENDERE.

☐ NOT GUILTY

There being a ~~not guilty~~ verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly did distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, to wit, heroin. Title 21, Sections 812, 841(a) (1) and 841 (b) (1) U.S. Code and conspiracy so to do. (Title 21, Section 846 U.S. Code).

as charged

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

EIGHT(8) YEARS on Count 1. ONE (1) YEAR on Count 2. Sentence on Count 2 to run CONSECUTIVELY with sentence imposed on Count 1.

SENTENCE
OR
PROBATION
ORDER

Pursuant to the provisions of Title 21, Section 841, U.S. Code, the defendant is placed on SPECIAL PAROLE for a term of SIX (6) YEARS on each of counts 1 and two (2) to run concurrently with each other and to commence upon expiration of confinement.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends.

COMMITMENT
RECOMMEN-
DATION

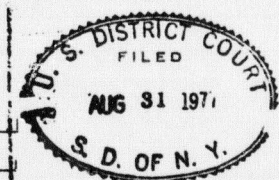
MICROFILM
SEP 1 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

CHARLES S. HAIGHT, JR.

Date 8-31-77



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

UNITED STATES OF AMERICA

-v-

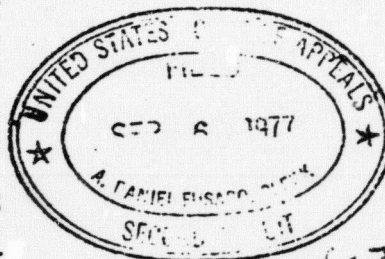
RAYMOND BROWN

Action Number 77 CR.340 (CSH)

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



Notice is hereby given that RAYMOND BROWN
above named, hereby appeals to the United States Court of
Appeals for the Second Circuit from the * JUDGMENT AND COMMITMENT ORDER
AUGUST 31, 19 77

Signed William Ackman
~~XXXXXXXXXXXX~~
Deputy Clerk-WILLIAM ACKMAN
by order of HAIGHT, J.

Address _____

Notice to:

* Insert whether order or final judgment:
or part thereof appealed from.